

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

UNITED STATES OF AMERICA,
Plaintiff,
v.
JESUS JIMENEZ AGUILAR,
Defendant.

NO. CR-02-6020-EFS
[NO. CV-05-5104-EFS]

**ORDER DISMISSING DEFENDANT'S
MOTION PURSUANT TO 28 U.S.C. §
2255**

BEFORE THE COURT is Movant Jesus Jimenez Aguilar's Motion Pursuant to 28 U.S.C. § 2255 to Vacate, Set Aside, or Correct Sentence (Ct. Rec. 41). Under Rule 4 of the Rules Governing Section 2255 Proceedings for the United States District Courts, Movant's request for relief is hereby considered to determine whether the Court should summarily dismiss the motion or order the Plaintiff to answer. See Rule 4(a), 28 foll. § 2255.

I. 18 U.S.C. § 2255: Statute of Limitations

Section 2255 of Title 28 allows a prisoner in custody to attack a sentence on the grounds that such sentence was imposed in violation of the federal constitution or law, the court did not have jurisdiction to impose such a sentence, the sentence was in excess of the maximum authorized by law, and/or otherwise subject to collateral attack. 28

1 U.S.C. § 2255. Yet, in order to bring such a claim, the petitioner must
 2 file suit within a year of:

- 3 (1) the date on which the judgment of conviction becomes final;
- 4 (2) the date on which the impediment to making a motion created
 by governmental action in violation of the Constitution or laws
 of the United States is removed, if the movant was prevented
 from making a motion by such governmental action;
- 5 (3) the date on which the right asserted was initially
 recognized by the Supreme Court, if that right has been newly
 recognized by the Supreme Court and made retroactively
 applicable to cases on collateral review; or
- 6 (4) the date on which the facts supporting the claim or claims
 presented could have been discovered through the exercise of
 due diligence.

7
 8
 9 *Id.*

10 **A. Date Conviction Became Final**

11 Conviction became final ten days after the entry of judgment. FED.
 12 R. APP. PROC. 4(b)(1)(A)(I); see *United States v. Schwartz*, 274 F.3d 1220,
 13 1223 (9th Cir. 2001); 28 U.S.C. § 2244(d)(1). Movant was sentenced on
 14 February 20, 2003, (Ct. Rec. 36), and his judgment was entered on
 15 February 21, 2003 (Ct. Rec. 38). Accordingly, § 2255(1) is not
 16 applicable as nearly two and a half years have passed between the date
 17 Movant's conviction became final and the filing of the instant petition
 18 on November 14, 2005.

19 **B. Non-retroactivity of *United States v. Booker***

20 The Supreme Court's ruling in *United States v. Booker*, 125 S. Ct.
 21 738 (2005), "is not retroactive, and does not apply to cases on
 22 collateral review where the conviction was final as of the date of
 23 *Booker's* publication." *United States v. Cruz*, 423 F.3d 1119, 1121 (9th
 24 Cir. 2005). Here, because Movant's conviction became final in early
 25

1 March 2003, prior to the Supreme Court's publication of *Booker* on January
2 12, 2005, Movant's *Booker*-based arguments are moot.

C. Newly Discovered Facts & Governmental Impediments

Because Movant seeks habeas relief wholly based on the new sentencing rule announced in *United States v. Booker*, 125 S. Ct. 738 (2005), and not the discovery of new facts or governmental impediments, 18 U.S.C. § 2255(2) and (4) need not be considered in determining whether the instant request for relief is timely.

D. Conclusion

10 For the reasons described above, the Court finds Movant is not
11 entitled to § 2255 habeas relief and hereby dismisses, with prejudice,
12 the instant request.

13 Accordingly, **IT IS HEREBY ORDERED:** Defendant's Motion Pursuant to
14 28 U.S.C. § 2255 to Vacate, Set Aside, or Correct Sentence (**Ct. Rec. 41**)
15 is **DISMISSED**.

16 **IT IS SO ORDERED.** The District Court Executive is directed to enter
17 this Order and provide a copy to the Defendant:

Jesus Jimenez Aguilar (15593-085)
200C 211L
P.O. Box 3540
Milan, NM 87021

DATED this 5th day of December, 2005.

S/ Edward F. Shea
EDWARD F. SHEA
United States District Judge

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